CONFERENCE ON DISARMAMENT

CD/PV.811
28 January 1999

ENGLISH

FINAL RECORD OF THE EIGHT HUNDRED AND ELEVENTH PLENARY MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 28 January 1999, at 10.05 a.m.

President: Mr. Grey (United States of America)

GE.99-60507 (E)

The PRESIDENT: I declare open the 811th plenary meeting of the Conference on Disarmament.

I have on my list of speakers for today the representatives of Finland, Mexico and Brazil. Once we have heard the speakers inscribed for today, I intend to bring up the requests from Côte d'Ivoire and Luxembourg for participation in the work of the Conference as observers in 1999, as well as the proposal by South Africa as contained in document CD/1483.

I give the floor to the representative of Finland, Ambassador Reimaa.

Mr. REIMAA (Finland): I would like to congratulate you, Mr. President, on your assumption of the presidency of the Conference on Disarmament and to assure you of the cooperation of my delegation in our common endeavours.

We hope that the Conference can move swiftly into substantive work this year. One could hardly justify a third year of the CD consuming its time in trying to organize itself and its work.

The United Nations General Assembly, and especially resolution 53/77 I on a treaty banning the production of fissile material, which was adopted by consensus, give us important guidance in our efforts. Finland highly appreciates the address given by His Excellency the Secretary-General of the United Nations, Mr. Kofi Annan, at the CD. This is a concrete indication that disarmament questions have a high priority on his agenda.

A good start was made last week with the adoption of the agenda of the Conference. It is obvious that there is a need to review the agenda of the Conference. However, that should be done in the context of the work of the Special Coordinator on the agenda.

Finland hopes that the same spirit of cooperation will prevail in designing the programme of work for this year's session. We agree with you, Mr. President, that this year's efforts should be built on the agreements and understandings that were achieved during the last session. Attention should be given to the fact that the disarmament calendar for this year is tight and heavy. We should consider what is workable and how scarce resources can best be utilized to promote our shared goals of disarmament and non-proliferation.

During this year, negotiations on a verification protocol for the Biological and Toxin Weapons Convention should move into a decisive phase. The States parties to the Non-Proliferation Treaty are to continue preparations for the 2000 Review Conference. The landmine issue remains high on the international agenda.

Furthermore, efforts under article XIV of the Comprehensive Nuclear Test-Ban Treaty will be launched to speed up the entry into force of the Treaty. In this context, I am pleased to inform you that Finland deposited its instrument of ratification of the CTBT in New York on 15 January 1999.

(Mr. Reimaa, Finland)

The CD should not overload its programme of work. This is particularly important in view of the successful conduct of the fissile material cut-off treaty negotiations. Important political commitments were endorsed last August with the establishment of the Ad Hoc Committee to negotiate a ban on the production of fissile material for nuclear weapons purposes. These commitments should now be followed, and these negotiations should receive a major portion of the meeting time available for the CD.

The FMCT will have a crucial role in the process of nuclear disarmament and non-proliferation. It is clear that there are a number of difficult issues to be addressed, and that the task ahead is not easy. However, this should not prevent us from moving into negotiations. As stated in the Shannon report, the mandate does not preclude any delegation from raising various issues for consideration in the Ad Hoc Committee.

A good start was made after the agreement reached last autumn on negotiations under the leadership of Ambassador Moher. A number of discussions on an expert level have taken place since, and this is all contributing to the deliberations ahead.

We hope that the Ad Hoc Committee on FMCT will start without delay, without linkages to other important issues relating to the programme of work of the Conference.

After a possible initial period of conceptual debate, the Committee should move promptly to genuine negotiations. In our view, earlier experience of CD negotiations could offer practical guidance for organizing the FMCT negotiations. That is to say, that the subject matters could be divided, for example, into two working groups. One could deal with legal issues, the other one with verification. Furthermore, we find it important to start expert work, particularly in the area of verification, at an early stage of negotiations.

Finland hopes that, in addition to the FMCT negotiations, the Conference would establish two other ad hoc committees, namely, the ban on transfers of anti-personnel landmines and negative security assurances. On these two topics, the CD made good groundwork during the last session, for which we want to thank Ambassador Campbell and Ambassador de Icaza, respectively. For both of these topics, a mandate would be readily available and the CD could start concrete work.

We would also be in favour of renominating the Special Coordinators for outer space issues and transparency in armaments.

As to the expansion of membership of the Conference, we do hope the Conference takes a positive decision on the proposal made by the Special Coordinator, Ambassador Hofer, a proposal which seemed to enjoy broad support among delegations as a step forward. I would like to refer to the view of the European Union that such a decision is only a step in the continuing process of expansion.

(Mr. Reimaa, Finland)

We agree with most if not all delegations that nuclear disarmament remains a key issue. It should be treated as such without linking it to other issues that the CD wishes to consider. While it is justified and necessary to pay attention to nuclear disarmament issues in the CD, Finland continues to believe that it would not be practical to seek the launching of negotiations on nuclear arms reductions per se in the CD. Nuclear disarmament is being pursued in the framework of commitments taken under the NPT. For the time being, we consider the START process as the most realistic and result-oriented way to move forward in nuclear arms reductions. With the prospect of a START 3 treaty, outlined in the Helsinki summit between President Clinton and President Yeltsin in March 1997, the START process could play a crucial role in ensuring that the process of nuclear arms reductions is made irreversible. At a later stage, it will be important to involve also the other nuclear-weapon States in the process.

At the moment, the fact remains that START 2 has not come into force, which is creating a bottleneck in treaty based nuclear arms reductions. It would be most unfortunate if the latest developments would be used to further delay the entry into force. Finland regrets this situation, which has a bearing on the work of the CD, the NPT review process and a large number of other disarmament and non-proliferation issues. The START 2 impasse is feeding doubts on the future direction of nuclear arms reductions. We would not consider it satisfactory if the process of treaty-based reductions were to be substituted by unilateral, unverifiable actions.

Finland is of the view that, at the Conference on Disarmament, last year's decision could be used as a framework for further consultations on the issue of nuclear disarmament. Consultations by the troika of the present, past and future Presidents would provide a mechanism to address substantive issues, as well as the various procedural proposals that have been tabled.

Nuclear disarmament is certainly not the sole challenge that the international community is facing in the area of disarmament and non-proliferation. The past year presented some worrisome developments. In the post-cold-war world, the role of nuclear weapons in military calculations should only move downwards. We find it useful that these questions also be raised here at the Conference on Disarmament, with a view to contributing meaningfully to nuclear disarmament and non-proliferation.

The PRESIDENT: I thank the representative of Finland for his statement and for the kind words addressed to the Chair. I now give the floor to the representative of Mexico, Ambassador de Icaza.

Mr. de ICAZA (Mexico) (translated from Spanish): Mr. President, first of all, I would like to express my delegation's satisfaction at seeing you preside over our work and offer you our support in the discharge of your important tasks. Secondly, I should like to associate myself with the cordial welcome extended to the representatives of Argentina, Colombia, Slovakia, Israel, Indonesia, Sweden and Venezuela. It is a source of particular

(Mr. de Icaza, Mexico)

satisfaction that among them are old friends, veterans in the areas of disarmament and security, and others whose reputations had already preceded them. With all of them we hope to engage in the productive relationship we had with our predecessors.

To you, Sir, our congratulations at having secured at such an early stage the adoption of an agenda for this year's session of the Conference on Disarmament, which, like last year's, stems from the consensus that, as long as there is no conclusion to the consultations on the review of the agenda, and without prejudice to their results, our negotiations and the work of this Conference will continue to be guided by the principles, objectives and programme of action of the Final Document of the first special session of the General Assembly devoted to disarmament. Last year saw the twentieth anniversary of this document, marking a period in which profound changes have occurred. The fact that its priorities continue to be valid for our Conference is doubtless an indication of how little we have achieved and the great amount of work to be done to meet the challenges of this period and to avail ourselves of the opportunities that a less tense and confrontational international environment offers us.

Our programme of work this year must meet the priorities of the international community in the field of disarmament, among which nuclear disarmament continues to be highest and the first in view of several factors of concern, such as new delays in the entry into force of Start II, challenges to the international non-proliferation regime, efforts in military alliances to seek new roles for nuclear weapons, and new and alarming twists in deterrence doctrines, and recent news on issues that could affect the Treaty on the Limitation of Anti-Ballistic Missile Systems, which so far has been considered the cornerstone of efforts to reduce nuclear arsenals. The Conference on Disarmament cannot, without losing all credibility and prestige, systematically ignore the greatest of the threats that continues to weigh on mankind: the possible use of nuclear weapons. This sole multilateral negotiating body in the field of disarmament cannot shirk the obligation devolving upon all States to undertake and conclude negotiations on nuclear disarmament.

Last year the Conference recognized these facts and instituted a mechanism for consultations which regrettably has demonstrated its limitations and exhausted its possibilities. The decisions of the delegations of South Africa and Egypt to resubmit draft decisions for the setting up of an ad hoc committee for nuclear disarmament enjoy the support of my delegation. In June last year, the Secretary for Foreign Relations of Mexico, Ambassador Rosario Green, along with the Ministers for Foreign Affairs of Brazil, Egypt, Slovenia, Ireland, New Zealand, Sweden and South Africa, issued a declaration on the need for a new agenda in the area of nuclear disarmament, and just a month ago the General Assembly adopted a resolution on this matter by an overwhelming majority, with less than 10 per cent of the Member States of the Organization voting against. In that resolution - 53/77 Y - this Conference is called upon to establish an appropriate subsidiary body to deal with nuclear disarmament, and to do so without delay. That is why my

(Mr. de Icaza, Mexico)

delegation hopes for a clear and forceful statement by the Conference today in response to the General Assembly's appeal to the Conference on Disarmament in that and other resolutions.

My delegation likewise supports the re-establishment of the ad hoc committee to negotiate a non-discriminatory, multilateral, effectively and internationally verifiable treaty prohibiting the production of fissile material for nuclear weapons or other nuclear explosive devices, which will meet the goals of nuclear non-proliferation and constitute an authentic disarmament measure. It is necessary to move towards clearly defined objectives on the scope and system of verification of the treaty to be negotiated. We must spare no effort in the search for areas of understanding leading us to conclude as soon as possible the negotiations on this significant measure called for in the "Principles and objectives for non-proliferation and disarmament" adopted in 1995.

My delegation deems it important to re-establish the ad hoc committee on security assurances and to continue its tasks in conformity with the mandate assigned to it. We also support the re-establishment of an ad hoc committee for the prevention of the arms race in outer space.

Recently, a week and a half ago, a regional seminar on anti-personnel landmines was held in Mexico City on the initiative of my Government and that of Canada, and I had the opportunity of hearing the voice of non-governmental organizations, in particular the International Campaign to Ban Landmines, which expressed their satisfaction at the entry into force of Amended Protocol II to the 1980 Convention, and the Ottawa Convention, and stated their hope that, through the follow-up machinery of these two instruments and their universal adoption, a definitive solution will be found to the humanitarian tragedy represented by anti-personnel mines. They set out their very serious and justified doubts as to the relevance and appropriateness of drafting a third instrument confining itself to transfers. My delegation shares these doubts on the part of international civil society, which unfortunately has not had the opportunity to address this forum.

The Conference on Disarmament's consultations on its agenda must continue. This is what we have asserted in the first paragraph of the agenda that we adopted for this year. We must also continue the consultations on our methods of work.

My delegation continues to support the recommendations of the Special Coordinator on the expansion of the membership of the Conference on Disarmament, Ambassador Erwin Hofer, and we believe we must approve without delay the membership applications of Ecuador, Ireland, Kazakhstan, Malaysia and Tunisia.

The PRESIDENT: I thank the representative of Mexico for his statement and for the kind words addressed to the Chair. I now give the floor to the representative of Brazil, Mr. Ayrosa.

Mr. AYROSA (Brazil): Mr. President, on behalf of my delegation, allow me to join previous speakers in congratulating you on your assumption of the presidency of the CD. We are confident that, under your able guidance and with your diplomatic experience and skills, this Conference will reach a decision on its programme of work shortly, thus paving the way for a successful and substantive session this year. May I also pay tribute to the diligent work done by your predecessor, Ambassador Ian Soutar, as well as to the usual efficiency displayed by the CD's secretariat?

I have asked for the floor simply to reiterate my delegation's support for the proposal made by the South African delegation and to be considered in today's agenda. As Ambassador Celso Lafer stated at the beginning of last year's session when this proposal was presented by Ambassador Selebi, we believe that this carefully worded draft is intended to precisely allow the level of support needed from all quarters in order to break the current logjam and open the way for a true debate on the next steps the CD can and should take in order to address squarely nuclear disarmament. We therefore thank again South Africa for its initiative and, consistent with the expectations of the international community, expect a positive response by this Conference thereon.

The PRESIDENT: I thank the representative of Brazil for his statement and for the kind words addressed to the Chair. That concludes my list of speakers for today. Does any other delegation wish to take the floor?

I should like to inform the Conference that further requests have been received from Côte d'Ivoire and Luxembourg for participation in the work of the Conference as observers during 1999. With your agreement, I should like the Conference to take a decision on these requests without considering them first at an informal plenary meeting. These requests are contained in document CD/WP.501, which is before you. May I take it that these requests are acceptable?

It was so decided.

The PRESIDENT: On the second issue, I would like to recall that the representative of South Africa made a proposal at the first plenary meeting on 19 January 1999 to establish an ad hoc committee on nuclear disarmament to deliberate upon practical steps for systematic and progressive efforts to eliminate nuclear weapons as well as to identify if and when one or more such steps should be subject to negotiations in the Conference. This proposal is contained in document CD/1483. At that time, he stated his intent to put this forward for decision today, 28 January. The Presidential consultations held yesterday indicate that this proposal does not enjoy consensus in the Conference at this stage, and therefore further consultations will be required on this proposal, as well as on all other proposals related to this issue which are now before the Conference, in order to achieve a consensus on how the Conference intends to address the question of nuclear disarmament. Are there any comments? I recognize the representative of South Africa.

Mr. GOOSEN (South Africa): It is obviously with deep regret that we hear today that the Conference on Disarmament, which is defined as "the single multilateral disarmament negotiating forum of the international community" and which "has the primary role in substantive negotiations on priority questions of disarmament", remains unable to reach a consensus on the establishment of a mechanism to deliberate on the issue of nuclear disarmament. This is despite the fact that the "Presidency consultations" which were conducted during 1998 clearly demonstrated that there is broad support in the CD, from across political groupings, for some mechanism to deal with the issue of nuclear disarmament. This is despite the fact that there is general agreement that nuclear disarmament is a concern of the entire international community. This is despite the fact that there is no other forum where substantive deliberations can take place on the nuclear disarmament issue. Deliberations which, I emphasize again, would not, and will not, undermine or threaten the nuclear disarmament negotiations between Russia and the United States, but would in fact support and reinforce these negotiations.

I fear that the intransigence of those delegations who continue to refuse to recognize the legitimate concerns of other States, while insisting that we should respect and show understanding for theirs, is likely to exacerbate, and not improve, the situation. The nuclear disarmament issue and the concerns that revolve around it cannot be brushed under the carpet and forgotten. The issue will continuously rise up and complicate our work. South Africa would urge the delegations involved again to consider their positions, particularly since what is on the table is a moderate approach, a moderate and reasonable proposal. It is a proposal where we are not insisting on the exact formulation or wording. It is a proposal, where, as in our statement of 19 January, we have made it clear that "we are more than willing to enter into intensive consultations to craft wording which would enjoy the necessary support". As was stated, the South African delegation stood ready to "work - at times of your choosing - with you and the delegations represented here so as to achieve agreement on the exact content and wording of the decision". No such consultations, to our knowledge, were convened and/or held in this regard.

The combined wisdom of this institution and of our predecessors has, however, provided us with a way forward which will not undermine or prejudge the positions of any - I repeat, any - delegation represented in the Conference on Disarmament. It is a mechanism which was agreed to by consensus, and it is a mechanism which was crafted to address the exact predicament which now faces us. I am referring to paragraph 5 of document CD/1036, dated 21 August 1990, which states as follows in subparagraphs (c) and (d):

> "(c) That the principal debate on the establishment of subsidiary bodies and their mandates shall be held during the first two weeks of the annual session; and
>
> "(d) That in case of an absence of consensus on the establishment of any particular subsidiary body or its mandate, the incumbent

(Mr. Goosen, South Africa)

President shall in the subsequent two weeks try to identify a Special Coordinator to assist in carrying out informal consultations with a view to reaching consensus."

I would now request the secretariat to distribute to all delegations represented in this room a copy of document CD/1036 as well as a copy of a document which contains a legal interpretation of the rules of procedure of the Conference on Disarmament with specific reference to paragraph 5 of the "Decision on the improved and effective functioning of the Conference on Disarmament" which is contained in CD/1036. We would further ask that the secretariat should in due course ensure that this legal opinion is distributed as an official document of the CD.

There are many issues which arise within the context of paragraph 5(d) of CD/1036, the foremost of which is most probably the cry: "What about the rule of consensus in the CD?" So let me use this opportunity to address this argument first. The "rule of consensus", or its inversion, the "right to veto", remains inviolate and unaffected. This is achieved in three ways:

Firstly, CD/1036 was agreed to by consensus by the Conference on Disarmament. In coming to this original decision on 21 August 1990, it is accepted that all delegations did so fully accepting the content of the document and fully agreeing to its implementation when the conditions which are described exist. Therefore the consensus which was established on 21 August 1990 is the consensus which is being exercised; it would in fact take a consensus to change or remove this paragraph from the document, or to prevent its provisions from being exercised.

Secondly, paragraph 5(d) was crafted to assist in situations where a consensus did not exist in the Conference on the establishment of a subsidiary body or its mandate. A suggestion that, given such a situation, a further consensus is required on the utilization of the deadlock-breaking mechanism would create a situation of double veto or double jeopardy. The purpose of the mechanism to assist in reaching consensus - as opposed to a mechanism to continue the original disagreement - would be frustrated.

Finally, delegations - especially those most closely concerned - can remain assured of, and secure in, the fact that the appointment of the paragraph 5(d) Special Coordinator does not in any way remove or negatively impact on the absolute requirement of the CD's rules of procedure that any decision on the establishment of a subsidiary body or its mandate, both before and after the appointment of the Special Coordinator, would be taken, and would be required to be taken, by consensus. The paragraph 5(d) Special Coordinator's only function is to assist the Conference on Disarmament in carrying out informal consultations with a view to reaching consensus.

Therefore, as we have said, the "rule of consensus", or its inversion, the "right to veto", remains in place - it remains inviolate and unaffected. The implementation of paragraph 5(d) of document CD/1036 in fact reinforces consensus. It does not take anything away from it.

(Mr. Goosen, South Africa)

I would now like to turn to some other issues which arise out of paragraph 5(d) of document CD/1036. The issues which I wish to address are (i) the functions and duties of the President of the Conference on Disarmament in the context of paragraph 5(d); (ii) the meaning of the phrase "try to identify"; (iii) is consensus required in the Conference on Disarmament for the appointment of the Special Coordinator?; and (iv) duration of the appointment of the Special Coordinator.

On the functions and duties of the President of the Conference on Disarmament in the context of paragraph 5(d), let me say, paragraph 5(d) clearly provides that decisions on the establishment of a subsidiary body should be taken by way of consensus. The paragraph, however, essentially indicates how the President of the Conference on Disarmament must act in cases where there is no consensus on the establishment of such a body in order to reach consensus. In such cases the President does not have discretion whether or not to appoint a Special Coordinator. After the first two weeks of the annual session when the principal debate on the establishment of subsidiary bodies and their mandates is to take place, in accordance with paragraph 5(c) of the Conference on Disarmament's decision CD/1063, the President is obliged to ("shall") try to identify such a person within two weeks to assist in the process of reaching consensus.

The phrase "try to identify" as it is used in paragraph 5(d) is accepted as having its normal meaning. The President of the Conference on Disarmament is therefore, in the situation envisaged by paragraph 5(d), obliged to ("shall") take all reasonable steps to identify a person to fulfil the Special Coordinator task. This must be done in the two-week period following the first two weeks of the annual session (when the principal debate on the establishment of subsidiary bodies and their mandate is to take place). If the President can identify a person, the President would appoint that person to fulfil the task outlined in paragraph 5(d).

We have already addressed the issue of consensus in general terms earlier in this statement. There are, however, some specific issues which we also wish to address in this context here. As stated above, paragraph 5(d) provides for situations where a consensus does not exist on the establishment of a subsidiary body or its mandate. The paragraph also does not, in any part of its text, indicate that a consensus in the Conference on Disarmament would be required for the appointment of a Special Coordinator in terms of its provisions. The appointment of the said Special Coordinator is done by way of unilateral action of the President. The text of paragraph 5(d) does not stipulate or imply in any way that the President has to clear his decision to appoint a Special Coordinator with anybody, nor does he have to seek consensus on such appointment. It is reasonable to accept that if consensus in this regard was intended by the drafters, the text would have contained a clear indication in this regard. This conclusion is endorsed by the fact that the text of paragraph 5(d) explicitly states that the decisions on the establishment of a subsidiary body must be taken by way of consensus. Any interpretation to the contrary would be in clear conflict with the text.

(Mr. Goosen, South Africa)

Paragraph 5(d) also provides no indication of any artificial restriction or limitation on the duration of the term of office of a Special Coordinator appointed in terms of its provisions. The duration of the term of office of a Special Coordinator appointed in terms of paragraph 5(d) would be determined by the eventual outcome of the informal consultations which are to be conducted by the Special Coordinator.

Mr. President, my delegation consequently formally requests that you, as the incumbent President of the Conference on Disarmament, undertake the necessary steps to ensure the implementation of paragraph 5(d) of the document CD/1036 in accordance with the provisions contained therein. We know that you are confronted by a difficult situation. South Africa, however, has full confidence in the objectivity and impartiality of the presidency of the Conference on Disarmament, whose primary function is to ensure the efficient, fair and equitable functioning of this important body. South Africa's delegation to the CD therefore remains available, and at your behest, to assist in ensuring that the Conference on Disarmament starts its work with the minimum of delay.

The PRESIDENT: I thank the representative of South Africa. Does anyone else wish to take the floor at this time?

As President, let me say that I have listened with interest to South Africa's legal interpretation of paragraph 5(d) of CD/1036. My initial reaction is I expect there may be as many interpretations as there are delegates represented here. That having been said, it is clear that under the terms of paragraph 5(d) of CD/1036, I am obliged during the next two weeks to try to identify a Special Coordinator to assist in carrying out informal consultations with a view to reaching consensus on the establishment of any particular subsidiary body. It is my intention to do so.

In the interim, it is my intention to continue to conduct intensive consultations on the question of the Conference's programme of work for 1999. I would like to remind the members of the Conference that, in this regard, I have proposed that we begin work at the same point where we left off last September, including the issue of expansion of membership. I hardly need to emphasize the importance for all of us to preserve the delicate and balanced compromises which we were able to reach after painful negotiations last year, and which should constitute a sound and appropriate basis for starting our substantive work this year. This is all the more important since the most crucial of those arrangements was agreed only very late in the past session. From my comprehensive bilateral consultations with you, I am aware of the very widespread desire to begin work on just such a basis. For this reason, I would hope that my further consultations would produce the desired result on restarting our work in the near future.

This concludes our business for today. Does any other delegation wish to take the floor at this stage? The next plenary meeting of the Conference will be held on Tuesday, 2 February 1999, at 10 a.m.

The meeting rose at 10.55 a.m.